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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,216	07/11/2003	John A. Pasko	TEC1238-01	4237
832	7590	06/06/2006	EXAMINER	
BAKER & DANIELS LLP 111 E. WAYNE STREET SUITE 800 FORT WAYNE, IN 46802			DRODGE, JOSEPH W	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,216

Applicant(s)

PASKO, JOHN A.

Examiner

Joseph W. Drodge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
4a) Of the above claim(s) ___ is/are withdrawn from consideration.
5) ☐ Claim(s) ___ is/are allowed.
6) ☒ Claim(s) 1-28 is/are rejected.
7) ☐ Claim(s) ___ is/are objected to.
8) ☐ Claim(s) ___ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on ___ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

Claims 1-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Support in the Disclosure for the claiming of "immediately transmitting of event messages" as now claimed in claims 1 and 16 could not be located. Thus, the claiming of "immediately..." constitutes **NEW MATTER**.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2,4,5,10-13,15,16,18,19,23, 24 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Garrod et al PGPUBS Document US2003/0174070, based on Provisional Application 60/364,297 filed on 3-13-2002 (copy enclosed). For independent claims 1 and 16, Garrod et al disclose a liquid level monitoring system (paragraphs 24,26) for monitoring events in a water treatment or liquid handling system (para. 24,27) comprising remote units (para. 28-29) having battery-powered (para. 33) sensor modules at selected segments of the system monitored (para. 29) , the modules having wireless communication devices (para. 32)

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having processors and software (para. 32,37,38) that enable detection and generation of messages pertaining to liquid level events such as occurrences of high and low liquid levels (para. 29,60,61,62) , with messages immediately transmitted as alarms, the messages received by a processing system (para. 61,62,63) that receives the messages and routes notification messages (para. 63) including to corrective measure entities.

Garrod discloses the following for various dependent claims: For claims 2 and 19 a capacitive probe and sensing circuit (para. 28) , a provider and communications network(s) for claim 4 (para. 41) , that may comprise a cellular network and the Internet or Web (para. 25 for claims 5,23 and 15, the event messages concerning at least high and low events and a sensor module identifier (para. 29,46,61) and location (para. 46) for claims 10 and 11, the system including database storing of identifiers (para. 46,47) and sensor module locations for claim 12, remote devices operable to being turned off and back-on in no-power and power modes (para. 33,34) for claims 13 and 18, the system having a timer for also generating periodically scheduled messages from the sensor modules (para. 47,57) for claim 24, and the event messages being sent through CDMA, TDMA and GSM-based networks (para. 32).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrod et al document '070 in view of Heger patent 6,568,264. Claims 3 and 21 further differ in requiring the sensor to comprise dielectric insulation. Such electrical insulation or dielectric insulation or cover is taught by Heger at column 1, lines 45-55. It would have been further obvious to have utilized such dielectric insulation of Heger to protect the electrodes or metallic parts of the sensors/detectors of Garrod from corrosion or other damage due to periodic immersion.

Claims 6,9,14,20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrod et al in view of Steen et al PGPUBS Document US2001/0024165. Claims 6,9,20 and 22 differ in requiring the sensor module being associated with a manhole cover such as depending downwardly from the module and communicating with a transmitting antenna such as a manhole-mounted antenna. Steen et al, formerly applied against the claims, teach level-sensing sensor modules mounted to or depending from manhole covers (para. 56) and associated with transmitting antennas (see antenna's 24 in paragraph 26. It would have been obvious to have adapted the Garrod et al system to include level sensing modules mounted to manhole covers and associated with antennas, as taught by Steen et al, since liquid flowing through sewers and channels underneath manholes is subject to rapid, unpredicted changes due to weather occurrences and demand and require real-time monitoring to effect changes in down-stream or upstream liquid treatment.

Claim 14 differs in requiring the communications device to include a GPS locator. Steen et al also teaches use of GPS network systems (para. 22, see "Globalstar LEOS satellite system") inherently suggesting such locator. It would have been furhter obvious to have incorporated the suggested GPS locator of Steen to the Garrod system, to enable maintenance of the module or communications device in the event of failure of the module or device or detection of problems in such vicinity causing unusual liquid levels requiring maintenance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrod et al in view of Steen et al as applied to claim 6 above, and further in view of

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Tullis patent 3,781,624. Claims 7 & 8 further require the sensor module mounted to the manhole supporting ring. Tullis teaches a level sensor mounted to such supporting ring (column 6, lines 10-48). It would also have been obvious to have utilized the Tullis supporting ring mounting in the Garrod/Steen system to more securely attach the sensor module to the manhole.

Claims 17 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrod et al in view of Wyatt et al patent 6,499,961. Claim 17 also requires the device to include a low power standby state, a feature taught by Wyatt at column 4, lines 10-11. It would have been obvious to have utilized such low power stand-by state to enable faster transitions of the sensor modules into active mode from inactive modes.

Claim 27 needs the circuit being capable of disconnecting power from the communication device upon detecting a low liquid level. Wyatt suggests such feature at column 4, lines 24-48. It would have also been an obvious expedient to have utilized such power disconnecting feature of Wyatt to enable servicing of the sensor module and communications device in the event the low liquid level signals are a result of sensor module failure.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrod et al in view of Bennett et al patent 6,229,448. Claims 25 & 26 also need the sensor being capable of detecting a low battery to activate the communications device or otherwise initiate a built-in test of the sensor module. Bennett teaches such features at column 4, lines 34-38. It would have also been an obvious expedient to have incorporated such low battery and self-testing features of Bennett, to enable timely

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replacement of components of the sensor module or communications device that have failed.

Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at 571-272-1151. The fax phone number for the examining group where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

May 26, 2006


JOSEPH DRODGE
PRIMARY EXAMINER